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Filed 8/24/04

CERTIFIED FOR PUBLICATION
APPELLATE DIVISION OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES

WILLIAM MITCHELL,)	BV 024557
Plaintiff and Appellant,)	(Compton Trial Court
v.)	No. 02C02479)
YOPLAIT, a division of GENERAL)	
MILLS INC.,)	
Defendant and Respondent.)	OPINION AND JUDGMENT
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APPEAL from a judgment of the Compton Trial Court of Los Angeles County,
Richard G. Berry, Judge. (Retired judge of the former Mun. Ct. for the L.A. Jud. Dist.
assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.
Kearney Alvarez, Paul Alvarez and Michele L. Jackson for Plaintiff and
Appellant.
Jones Day, William J. Emanuel, Harry I. Johnson, III and Elaine T. Byszewski
for Defendant and Respondent.

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1 Industrial Welfare Commission (IWC) explicitly permitted its AWS with three 12-hour
2 days. Appellant did not dispute respondent's factual allegations, but argued that, as a
3 matter of law, the AWS was illegal and unenforceable. The parties executed a joint
4 stipulation of facts, and the matter proceeded as a court trial. By its statement of
5 decision and judgment filed on November 26, 2002, the trial court found for respondent.
6 The court noted that the law generally provided for an eight-hour day and overtime for
7 all hours in excess of 40 hours a week, but that an AWS entered into pursuant to section
8 511 was an exception to such rules. The statement of decision and judgment contained
9 the following conclusion by the trial court: "The I.W.C. Order and the Labor Code when
10 read together, though seemingly convoluted and in conflict, do conclude in the following
11 results in the view of this court. [¶] 1. The A.W.S. entered by the employees was lawful
12 and in accordance with the 12-hour per day limit as stated in §511(b) of the Labor Code.
13 [¶] 2. All hours worked in excess of 40 per week must be paid at a rate of 1-1/2 times
14 the regular rate of pay. [¶] 3. The defendant has been paying its employees, including
15 the plaintiff, at a lawful rate and continues to do so. [¶] Judgment for the defendant. . . ."

16 17 **Contention On Appeal**

18 In this timely appeal, appellant argues that the Labor Code only allows an AWS
19 in the context of a 40-hour workweek where an employee works 10-10-10-10. Since
20 respondent's AWS called for 12-12-12-6, asserts appellant, it was illegal, and he is
21 entitled to overtime for the ninth and tenth hours worked on the three 12-hour shift days.

22 **Discussion**

23 The resolution of this appeal turns on the correct interpretation of section 511.
24 Since this matter presents a pure question of law, and the underlying facts are not in
25 dispute, this case is subject to our de novo review. (*Ghirardo v. Antonioli* (1994) 8
26 Cal.4th 791, 799; *Diamond Benefits Life Ins. Co. v. Troll* (1998) 66 Cal.App.4th 1, 5.)
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1 Section 510 sets out the basic framework for regular and overtime hours. Section
2 510, subdivision (a), provides in relevant part as follows:

3 “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours
4 in one workday and any work in excess of 40 hours in any one workweek . . . shall be
5 compensated at the rate of no less than one and one-half times the regular rate of pay for
6 an employee. Any work in excess of 12 hours in one day shall be compensated at the
7 rate of no less than twice the regular rate of pay for an employee. . . . The requirements
8 of this section do not apply to the payment of overtime compensation to an employee
9 working pursuant to any of the following: [¶] (1) An alternative workweek schedule
10 adopted pursuant to Section 511. . . .”

11 Section 511, created by Assembly Bill No. 60 (Assembly Bill 60) (Stats. 1999, ch.
12 134, § 5) and entitled “Alternative workweek schedules,” provides in relevant part as
13 follows:

14 “(a) Upon the proposal of an employer, the employees of an employer may adopt
15 a regularly scheduled alternative workweek that authorizes work by the affected
16 employees for no longer than 10 hours per day within a 40-hour workweek without the
17 payment to the affected employees of an overtime rate of compensation pursuant to this
18 section. A proposal to adopt an alternative workweek schedule shall be deemed adopted
19 only if it receives approval in a secret ballot election by at least two-thirds of affected
20 employees in a work unit. The regularly scheduled alternative workweek proposed by
21 an employer for adoption by employees may be a single work schedule that would
22 become the standard schedule for workers in the work unit, or a menu of work schedule
23 options, from which each employee in the unit would be entitled to choose. [¶] (b) An
24 affected employee working longer than eight hours but not more than 12 hours in a day
25 pursuant to an alternative workweek schedule adopted pursuant to this section shall be
26 paid an overtime rate of compensation of no less than one and one-half times the regular
27 rate of pay of the employee for any work in excess of the regularly scheduled hours
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1 established by the alternative workweek agreement and for any work in excess of 40
2 hours per week. An overtime rate of compensation of no less than double the regular
3 rate of pay of the employee shall be paid for any work in excess of 12 hours per day and
4 for any work in excess of eight hours on those days worked beyond the regularly
5 scheduled workdays established by the alternative workweek agreement. . . .”

6 We are required to “give meaning to every word of a statute if possible, and . . .
7 avoid a construction making any word surplusage. [Citation.]” (*Arnett v. Dal Cielo*
8 (1996) 14 Cal.4th 4, 22.) Under section 511, subdivision (a), an AWS may not require
9 employees to work longer than 10 hours in a day without receiving overtime
10 compensation. Appellant interprets section 511, subdivision (a), to *prohibit* any
11 workday longer than 10 hours in any AWS, and thus respondent’s AWS, with three 12-
12 hour workdays, is illegal and unenforceable. This interpretation, however, is
13 contradicted by subdivision (b) of section 511, which specifically provides for a 12-hour
14 workday in an AWS. We conclude that the AWS at issue in this case, under which the
15 employees worked 36 hours at regular pay and six hours at overtime pay, is in accord
16 with the statutory scheme and legally proper.²

17 This conclusion is consistent with the relevant legislative history of Assembly Bill
18 60. The legislative reports provide that “[t]he maximum legal daily hours of work are
19 not at issue in this bill. . . .” (Assem. Com. on Labor & Employment, Analysis of
20 Assem. Bill 60 (1999-2000 Reg. Sess.) as amended Apr. 26, 1999, com. 6; *id.*, as
21 amended Mar. 15, 1999, com. 6.) Furthermore, the purpose of section 511 was not to
22 limit the overall number of hours in an alternative workweek shift, but rather to “limit[]
23 the alternative schedules to not more than 10 hours per day without triggering daily
24 overtime.” (Assem. Com. on Labor & Employment, Analysis of Assem. Bill 60 (1999-
25 2000 Reg. Sess.) as amended Apr. 26, 1999, com. 3; *id.*, as amended Mar. 15, 1999,
26 com. 3.) The statutory scheme “allows a menu of alternative workweek options rather

27 ²Respondent’s requests for judicial notice are granted. Respondent’s motion to
28 strike all or portions of appellant’s reply brief is denied.

1 than a single choice such as a 4/10 (four ten hour day) schedule.” (*Ibid.*)³

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3 The judgment is affirmed. Respondent to recover costs on appeal.

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Lee, P.J.

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We concur.

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Wasserman, J.

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Lager, J.

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³This interpretation is further supported by the IWC, which, in the “Statement As To The Basis” for wage order No. 1-2001 (Cal. Code Regs., tit. 8, § 11010 et seq.), opined that “reading these two provisions of the Labor Code [subdivisions (a) and (b) of section 511] together, an employer who requires an employee to work beyond the number of hours established by the alternative workweek agreement, even if such overtime hours are worked on a recurring basis, does not violate the law if the appropriate overtime compensation is paid.”